

SECTION 4. CONFLICT OF INTEREST ISSUES

Conflicts of interest arise in a variety of ways. Because of the myriad of laws in this area, it is quite difficult to determine if one has a conflict of interest. This section of the Guidebook is intended to assist Councilmembers and the Mayor in recognizing situations that may give rise to a conflict of interest. The California Attorney General's Office has prepared the most comprehensive handbook on conflicts of interest. This Office will order a copy of that handbook for each new elected official and make it available upon receipt.

The City Attorney's Office is available to discuss conflict of interest issues. The duty is on the elected officials to present any information concerning potential conflicts of interest to the City Attorney so that advice can be provided. If we independently know of information that may create a conflict of interest, we will certainly bring it to the official's attention. However, we simply are not privy to all the transactions involving individual elected officials and, therefore, cannot be responsible for raising conflict issues for each elected official.

Conflict of interest opinions are fact intense and require significant research and analysis. For this reason, we request that questions be posed in writing and in advance of any participation on a particular matter or issue which may give rise to a conflict. Questions raised on the dais as a matter that is about to be considered by Council will usually result in conservative advice recommending to the elected official that he or she announces the conflict and disqualify himself or herself from the matter. In matters involving potential conflicts, advance preparation is very important to ensure that participation occurs in an appropriate manner.

The City Attorney serves as legal advisor to the Council and Mayor in their official capacities. It is the City's interests we represent. Because a conflict issue may affect a decision of the entire Council or of the Mayor, our practice is to provide a copy of all legal opinions and memos requested by one elected official to the rest of the elected officials.

A. COMMON LAW DOCTRINE

In 1928, the California Supreme Court enunciated the common law doctrine²⁸ against conflicts of interest as follows:

A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.²⁹

²⁸ The common law has developed through precedential court decisions. It differs from statutory law which has been created through the legislative process.

²⁹ *Noble v. City of Palo Alto*, 89 Cal. App. 47, 51 (1928).

Against this backdrop of the common law doctrine, a multitude of conflicts of interest laws have been enacted. These laws are applicable to particular officers or agencies. They include threshold amounts, disclosure requirements, participation prohibitions, and other limitations.

B. POLITICAL REFORM ACT

The majority of legislation and regulations relating to conflicts of interest are embodied in the Political Reform Act³⁰ that was adopted by a vote of the people in a statewide initiative in 1974. The overall purpose of the Political Reform Act was designed to make sure that the public's business is conducted in a lawful and unbiased manner. To accomplish this goal, several levels of regulation have been set up.

The first major area of regulation deals with **disclosure of economic interests**. All incoming elected officials must disclose certain types of financial interests on forms available to the public. Those forms must be submitted to the City Clerk within 30 days of assuming office by each new member. Also, on an annual basis, Councilmembers and the Mayor must update their forms to reflect changes in the previous calendar year. A second area of regulations deals with the **disqualification of public officials** from participating in decisions. The purpose of these regulations is to determine when a public official has a financial interest which should either be disclosed to the public and/or require that the elected official disqualify himself or herself from participating in the decision-making process regarding the financial interest. The regulations also discuss who is a public official covered by the Political Reform Act. These include officers, employees and certain types of consultants to local government.

The Political Reform Act also has campaign regulations. These regulations are not discussed in this Guidebook because the City Attorney's Office does not represent elected officials in their roles as candidates. The regulations also have a category regulating lobbyists at the statewide level. Finally, the Political Reform Act regulates mass mailings sent at public expense.

1. Fair Political Practices Commission.

The administration of the Political Reform Act is handled by the Fair Political Practices Commission ("FPPC"). It is an independent statewide body that is made up of members appointed by the Governor and the Legislature. The FPPC has a full-time staff which provides assistance to local elected officials. The FPPC has forms, manuals, and related information available on the Website at www.fppc.ca.gov. The FPPC also provides informal assistance over the telephone to any person with a conflict of interest question. This is a valuable tool that can be used by all elected officials to spot conflict issues prior to a matter coming before them. The advice line is available during normal business hours at (916) 322 5660 or 1 (866) ASK-FPPC [(866) 275-3772]. The

³⁰ Gov. Code §§ 81000 *et seq.*

staff is courteous and helpful and will get back to callers within one calendar day.

In addition to informal assistance, the FPPC also offers formal assistance through written responses. If one seeks a formal opinion, the FPPC staff will respond in writing within 30 days of the request.

In the case of a conflict of interest, the elected official in question has the duty to disqualify himself or herself. This duty cannot be delegated to staff members or to an attorney. The duty rests with the officials in question because only they know the extent of their own personal financial dealings.

Attached in the Exhibit Section is a pamphlet entitled, "*Can I Vote? Conflicts of Interest Overview*" prepared by the FPPC to assist public officials in determining whether a disqualifying conflict or interest exists. Elected officials may not accept gifts from any source in any calendar year with a total value of more than \$320 as of January 1, 2001. The gift limitation is adjusted every odd numbered year to reflect the changes in the Consumer Price Index.³¹ Also attached is a fact sheet prepared by the FPPC entitled, "*Limitations and Restrictions on Gifts, Honoraria, Travel and Loans*" for local officers and employees.

2. Civil and Criminal Enforcement.

If a conflict of interest exists, there are several different agencies or persons who may bring an action to enforce the Political Reform Act. A district attorney, the Attorney General or the FPPC may bring an action, either civil or criminal. In addition to those listed above, any person residing within the jurisdiction may obtain authorization to bring a civil action to enjoin violations or compel compliance with the Political Reform Act. Finally, a local agency may discipline persons who violate certain provisions of the Political Reform Act.

Under the criminal penalties of the Political Reform Act, a knowing and willful violation of the Political Reform Act is a misdemeanor punishable by a fine and/or imprisonment. A violator may be fined up to \$10,000 or three times the amount not properly disclosed, unlawfully contributed, expended, gave, or received, for each violation. Finally, any person convicted of a misdemeanor is barred from being a candidate for any elective office or acting as a lobbyist for four years following the conviction.

An official action by the Council or the Mayor may also be set aside by a court if a Political Reform Act violation has occurred and the action might not have otherwise been taken had the violator disqualified himself or herself.

³¹ Gov. Code § 89503.

**C. CONFLICTS OF INTEREST IN CONTRACTS
(GOVERNMENT CODE §§ 1090 et seq.)**

Dating back to the 1850's, California has codified a common law prohibition against "self dealing" in contracts. This prohibition is commonly known as "the Section 1090 prohibition" and basically provides that City officers or employees cannot be financially interested in any contract made by them in their official capacity or by the body of which they are members. A contract made in violation of Section 1090 subjects the officer or employee to a fine or imprisonment and to a perpetual disqualification from holding office in California. Moreover, a contract made in violation of Section 1090 is void.

**D. CONSTITUTIONAL PROHIBITION ON PASSES OR DISCOUNTS FROM
TRANSPORTATION COMPANIES: FORFEITURE OF OFFICE**

The California Constitution contains a very strict prohibition against the acceptance of passes or discounts from transportation companies by public officers. California Constitution Article XII, Section 7 states:

A transportation company may not grant free passes or discounts to anyone holding an office in this state: and the acceptance of a pass or discount by a public officer. . . shall work a forfeiture of that office. (Underlined for emphasis.)

The acceptance of such pass or discount "shall work a forfeiture" of the office held by the recipient. For this reason, public officials should be aware of this Constitutional prohibition whenever they are offered such passes or discounts.

**E. DISCLOSING FINANCIAL INTERESTS IN PROPERTY WITHIN
REDEVELOPMENT PROJECT AREAS**

While we have devoted a section to California Redevelopment Law (Section 11), it is important to note here that the California Redevelopment Law requires disclosure compliance in addition to the annual disclosure forms required by the FPPC and filed with the City Clerk.

We must emphasize the importance of disclosure. The general rule is that persons who have direct or indirect financial interests in a project area may not participate in any decision that affects the project area. Participating in the decision can render the decision invalid. ***Further, failure to disclose constitutes misconduct in office.*** Health and Safety Code Section 33130 provides as follows:

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If any such officer or employee owns or has any direct or indirect financial interest in any property included within a project area, that officer or employee shall immediately make a written disclosure of that financial interest to the agency and the legislative body and the disclosure shall be entered on the minutes of the agency and the legislative body. Failure to make the disclosure required by this subdivision constitutes misconduct in office.

Sanctions may include removal from office, disqualification for future public office, and possible fines or imprisonment.

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